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ChiPinochet's Anniversary Speech and the  
Constitutional Controversy

In his speech marking the fifth anniversary of the overthrow of the Allende government on 11 September, President Pinochet outlined the latest *and as yet, most* definite plans for the transition from military to civilian government. According to Pinochet, a new constitution, prepared under his guidance, would be submitted to voters next year, but elections would not be held until 1985. Initial reaction to the speech has focused on the long interval before civilian rule. Probably of greater significance, however, is the developing controversy over the Pinochet constitution, which differs markedly from Chile's 1925 constitution. Pinochet intends to submit the new constitution for approval in a national plebiscite, some possible outcomes of which could produce serious, even critical problems for the regime. Whether Chileans accept or reject the new charter, the Pinochet constitution and the opposition to it disclose once again the political consequences of the regime's perception of the profound cleavage in Chilean politics.

The Approach to a New Constitution

In his lengthy speech, often polemical in tone, Pinochet dealt with *more than the* transition to civilian rule. As he has in the past, he defended the legitimacy of the coup and the moral mandate of his military regime, reviewed its progress, highly praised its economic performance, and covered a wide range of domestic and international issues. He met head-on many of the past and present criticisms of his administration and its policies

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President Pinochet (white jacket) and junta members at fifth anniversary of the military coup

and boldly raised some thorny matters, most notably the Letelier case. All in all, it was a long and strongly worded defense of his embattled regime in its continuing struggle against the forces and ideologies allegedly manifested in the overthrown Allende administration. In that struggle, Pinochet claims to enjoy majority support against his opponents. His claim will be put to an important test when Chilean voters are given the chance to accept or reject the regime's constitution--a controversial document, one of whose major purposes is to prevent legally another Allende-type government.

According to Pinochet, the vote on the new constitution will begin a three-stage process leading to civilian rule:

- In stage one; the Chilean people next year will be asked to approve the new constitution, drafted by experts chosen by the junta and prepared under Pinochet's guidance.
- In stage two, lasting six years, Chile will be ruled by a transitional government in which political power will be shared with legislators appointed by the junta.

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-- In stage three, reached in 1985, a civilian government will be elected under the rules of the new constitution.

About the return to civilian rule: the regime perceives two imperatives: it must re-establish a Civilian political system, and secondly, that system must be invulnerable to the political assaults of the forces and ideologies that caused the "trauma" of 1973.

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The strong emotion behind the view that a "safe" constitution is a critical necessity was displayed in Pinochet's anniversary speech by his characterization of the Allende regime and his description of the circumstances surrounding its removal: "a totalitarian Marxist-Leninist oppression aimed at implementing a Communist tyranny. . . . those who tried to annihilate forever the basic principles of Chilean nationality." This harsh rhetoric, which included the phrase "civil war," is meant to remind regime supporters of the irreconcilable differences between those who still support the deposed administration and those who approve its overthrow. In this "we" and "they" division, "they" cannot be simply regarded as an opposition party in a democratic system-- "they" are the enemy, and a constitutional system must be constructed that will prevent them from coming to power.



The Constitutional Reform Committee at work

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As a consequence, the military regime has given considerable time and thought to the writing of the new constitution. For nearly five years, a Constitutional Reform Commission--appointed by the junta and guided by Pinochet--has labored on a draft. Many Chileans, including members of the opposition, would agree that the constitution of 1925 had serious weaknesses and needed revision, particularly to prevent the election of a president by a minority and to make it impossible for a chief executive to impose unconstitutional acts. Although there is little opposition to the writing of a new constitution, there has been considerable questioning of its specific terms. This controversy sharpened when the reform commission finally presented its 306-page draft to the military junta and details began to leak out. It is this basic document--with some revisions--that will be submitted to Chilean voters next year. As yet, the regime has refused to release the complete text, but some copies have evidently moved outside the inner circles, and sketchy newspaper accounts have appeared. 15c

#### The Content of the Constitution

Although only general conclusions are now possible, the Pinochet constitution seems to be a mixed document, prepared with an eye to its acceptability by the Chilean people. It contains a great deal of the constitution of 1925, and it makes some unobjectionable revisions of former weaknesses. But it also goes beyond this to new concepts that are not likely to meet universal approval in Chile. It does not eliminate political parties in favor of corporatist representation, and it does not provide for the indirect election of the president--two rightwing possibilities that have been rejected. In the definitional jungle where these terms serve polemical purposes, it will certainly be labeled "democratic" and "anti-democratic," both inside and outside Chile.

At the national level, the new constitution provides for a government of limited powers separated between president, congress, and a Constitutional Tribunal. A fourth, specialized power also exists--a new institution called the Council of National Security, composed of the president, selected military leaders, and the presidents of the Senate, the Supreme Court, and, the Central Bank.

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In a system of universal suffrage, the president-- whose position is greatly strengthened vis-a-vis the legislature--is to be directly elected by a majority vote (made necessary by the provisions of a runoff election) for a single term of eight years. In a bicameral legislature, the Chamber of Deputies will number 150; with the probable but still-undecided abolition of the old proportional representation system, each deputy will represent a single-member district. The Senate will have 45 members, 30 directly elected nationwide and 15 appointed by the president or given automatic membership as ex-officeholders of high rank. The third branch of government, the Constitutional Tribunal; will have extensive and important powers including declaring laws unconstitutional; mediating conflicts between the president and congress; and judging whether words or deeds fall into one of the categories--like "totalitarian"--to be proscribed by the constitution. Most of its members, all lawyers, will be appointed by the Supreme Court, but some will be named by the president and the Senate. The Council of National Security, a kind of watchdog body, seems to have the power to investigate any individual, group, or authority whose actions it believes constitute a threat to the security of the nation.

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Opposition may develop to some of these provisions, but it certainly will not be fundamental in nature. Sure to provoke strong controversy, however, is the new catchall provision that could be widely used to limit speech and action. Explicitly noting that it differs here from the more permissive constitution of 1925, the regime's new document forbids "any act by persons or groups intended to propagate doctrines aimed against the family, advocate violence or a totalitarian conception of society or of the state or is founded in class war, or is against the dignity or the rights that emanate from human nature." Specific prohibitions of behavior under this provision would follow decisions of the Constitutional Tribunal. This extraordinarily broad language seems sure to enlarge the focus of the constitutional debate. Those who wrote this provision certainly intended it to proscribe the Chilean Communist and Socialist parties, but opponents can reasonably ask whether the provision

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could not be used to ban other parties as Well. One argument to be made is that such a provision is Simply not workable.

Further hostility to the new constitution will predictably be engendered by the rights it grants to private property and to the free enterprise system as well as the limitations it imposes on the rights of unions. The Pinochet regime is quite explicit in its disdain for the alleged statist economic failures of the two previous administrations and in its conviction that only a market economy can guarantee a prosperous Chile. It obviously intends to provide a constitutional advantage to its preferred economic system. In Chile, where leftist parties polled almost 44 percent of the vote in the 1973 congressional election, there are many partisans of strongly opposing viewpoints.

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Although the right to form unions is clearly granted, they may not intervene in politics, and the right to strike is prohibited in public employment and in certain vital industries. In the rest of the private sector, labor unions must first go to compulsory bargaining and arbitration, and the right to strike does not seem to be unambiguously granted. This still seems to be a matter to be decided by a supplementary labor law or by constitutional interpretation. Through a number of provisions; the constitution tries to prevent the influence of political parties or other organizations, especially unions and professional groups.

#### Constitutional Controversy

This brief selection of a few elements of the available text cannot adequately summarize or interpret a complex document. What is politically significant is that parts of it have aroused considerable negative opinion. Complaints are being voiced not only about the substance of the regime's constitution but about the plebiscitary process to ratify it. A group of opposition experts, many of them Christian Democrats, has even begun to prepare an alternative constitution.

Taking note of the criticism, Pinochet has made explicit the regime's determination to stick to its stated

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course. He pointed out that the present draft will be examined by a consultative body, the Council of State; following that, the junta will make a final analysis, and with the technical help of the Constitutional Reform Commission, it will approve the final product. Responding to those "who are worried about the course of the draft constitution," Pinochet said the government would "welcome every idea or suggestion aimed at improving it." Nevertheless, even if the regime is disposed to be fair and open to outside suggestions, it is extremely improbable that it will materially change the basic concepts of its constitution.

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The regime will have a great deal riding on the coming plebiscite. When speaking of the transition stages, Pinochet seemed to assume that the new constitution would be ratified. If it is not, it would be a great source of embarrassment for the regime. Defeat of the carefully constructed "safe" constitution would imply approval for a more liberal one. In Pinochet's view, this could only lead to the acquisition of power by the type of enemy the military was forced to overthrow in 1973. Voter rejection of the regime's constitution could thus create a crisis for the Pinochet government more severe than anything it has yet had to face.

As yet, there are no signs the regime faces any great risk in permitting the plebiscite. It apparently believes it enjoys high civilian support, a perception perhaps colored by the success of its plebiscite victory last January. Then, 75 percent voted against the UN resolution condemning the human rights situation in Chile. Though the choice was forced upon the voters, the election seems to have been totally honest. It was also a great and unexpected victory for Pinochet, who spoke of the vote as "legitimizing" his regime. Pinochet's position in the forthcoming constitutional plebiscite will not be assisted by the nationalistic bias of the earlier vote, however, and a negative outcome is possible.

Even if the regime wins the plebiscite, but only by a small margin, problems will remain. Given only slight approval, what kind of legitimacy will the Chilean people accord to the new constitution and its political system?

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A big regime victory--say well over 60 percent--would leave Pinochet with the fewest problems, although the country's basic ideological split would still remain.

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Somewhere in the voting process the regime may estimate that it is going to lose; it may then call off the election or try to win by fraudulent means. Either action would also cause serious difficulties.

At present, there can only be speculation on the outcome of the plebiscite. Many estimates--often contradictory--are made about regime support; all lack a solid, current basis. Thus, the vote will not only provide a severe test for the junta, but will also tell a great deal about the basic attitudes of the Chilean people after five years of military rule.

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